

or made final. It is again requested that the Examiner reconsider the previously-issued restriction requirement for the reasons set forth in the traverse filed March 1, 2004.

Provisionally-elected claims 9-15 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 720,439 to Kadletz et al. (reference C) in view of U.S. Patent No. 5,586,931 to Williams, Jr. (reference B). This rejection is respectfully traversed. Applicant's claims 9-15 are very specifically directed to "A process for shelling a crustacean to permit removal of meat from a tail shell thereof...comprising: separating a head/body portion of said crustacean from said tail shell; providing a shelling tool having a handle and an elongate rod extending away from said handle, said elongate rod having a longitudinal slit extending inwardly from a distal end thereof, said longitudinal slit defining an upper rod fork and a lower rod fork of said elongate rod; sliding said lower rod fork into an open end of said tail shell along an inside surface of an underside of said tail shell such that said underside of said tail shell is guided into said slit a desired distance; and rotating said tool about a longitudinal axis thereof to thereby produce a crack in said underside of said tail shell and expose the meat contained therein." These specifically claimed features of applicant's invention provide a process for quickly and easily removing the meat contained within the tail of a crawfish without damaging the meat or squeezing the prized succulent juices therefrom.

These very important features of applicant's claimed invention are simply not shown or suggested by any of the cited references, taken alone or

in any combination. The primary Kadletz et al. reference is directed to a device for skinning or scaling a fish. The Kadletz et al. device includes an arm A' having a sharp knife a' formed at the distal end thereof for slitting the skin of a fish along its back and along its belly, in two separate operations. A spring-loaded clamping bar D extends along an inside portion of arm A' so that the skin of the fish at one end may be inserted and held firmly between arm A' and clamping bar D. The user then holds the fish with one hand while grasping arm A² of the skinning device with the other hand in order to pull the skin from the fish.

The secondary Williams, Jr. reference is directed to a utensil for opening elongate sections of crab leg shells in which the shell is received in the opening between a sharpened blade and a blade-protecting member. The user then moves the utensil longitudinally along the shell to cut through it as the utensil moves linearly forward (column 9, lines 42-54). This cutting action is much like that resulting from pushing a pair of scissors along a sheet of paper while maintaining a fixed opening angle between the scissor blades. While this linear motion of the bladed utensil taught by Williams, Jr. will cut through most crab leg shells, the reference teaches that the utensil may be operated such that the "...sharpened edge of the blade can be brought forcefully into contact with the underside of the shell as a result of lifting the handle to cause a forward portion of the protecting member to pivot upon an upper portion of the shell, and to cause the shell to break at the location of the sharpened end of the blade. If the shell is particularly tough, the user may need to lift the handle several times during the movement of the

blade along the shell, in a form of prizing motion." (column 2, lines 57-67 and column 10, lines 16-26). This prizing motion of the tool of Williams, Jr. will certainly result in the undesirable compression of the meat sought to be removed. The use of this cutting/prying tool in the way taught by Williams, Jr., while perhaps effective in breaking a rigid crab leg shell, would be totally ineffective in accessing the meat within the tail of a lobster or crawfish tail because the prizing motion of the tool would simply cause the tail to bend from one end to the other without cracking it.

Contrary to the Examiner's statements, the Williams, Jr. reference contains absolutely no description within the four corners of that document of applicant's specifically claimed steps of 1) separating a head/body portion of the crustacean from its tail shell; 2) providing applicant's specifically claimed tool; 3) sliding the tool into the open end of the shell a desired distance; and 4) rotating the tool about its longitudinal axis to thereby crack the underside of the shell. Mere insertion of applicant's non-bladed tool does not effect cracking of the shell; only his specifically claimed rotation of the tool following insertion performs that function. This is totally unlike the bladed tool taught by Williams, Jr., which serves to cut a crab leg shell as the tool is being inserted under and along the shell. Thus, the Williams, Jr. reference teaches away from applicant's specifically claimed invention. Furthermore, the bladed tool taught by Kadletz for skinning fish would be totally ineffective, and likely destructive, in an attempt to use it to perform applicant's specifically claimed process.

For the reasons set forth in detail above, it is applicant's position

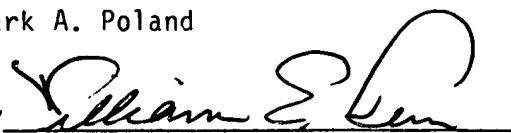
that neither the Kadletz nor the Williams, Jr. reference contains any showing or suggestion whatsoever for combining those references in the general way suggested by the Examiner. Therefore, any such combination would amount to reconstruction of applicant's invention using hindsight. It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. In re Fritch, 972 F.2d at 1266. Thus, obviousness cannot be established by combining the teaching of the prior art to produce the claimed invention, absent some teaching or suggestion in the prior art supporting the combination. In re Lindemann, 732 F.2d at 1577. Even assuming arguendo that the Kadletz and Williams, Jr. references could be combined with the benefit of applicant's teachings, it is submitted that they cannot be combined in an operative fashion, for the reasons set forth in detail above. In re Lintner, 458 F.2d 1013, 173 USPQ 560, 562 (CCPA, 1972); In re Regel, 526 F.2d 139, 188 USPQ 136 (CCPA, 1975); In re Jansson, 609 F.2d 996, 203 USPQ 976 (CCPA, 1979). Moreover, any such combination would still fail to yield applicant's specifically claimed invention, again for the reasons set forth in detail above.

In view of the foregoing remarks, it is respectfully submitted that applicant's claims 9-15 are clearly patentable over all of the references of record, taken alone or in combination, and that this application is now in condition for allowance. Favorable action is accordingly solicited.

Respectfully submitted,

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